IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1077 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DR. SUVASBHAI RAMANLAL SHAH - Appellant(s)
Versus
SAIDBEG BASIRBEG MIRZA & 2 - Defendant(s)

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Appearance :
MR ARPIT A KAPADIA for Appellant(s) : 1,
NOTICE SERVED BY DS for Defendant(s) : 1 - 2.
NOTICE SERVED for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/11/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 24.11.2005 of the Motor Accident Claims Tribunal (Aux.) Panchmahals at Godhra in MAC Petition No.1135 of 1997. The appeal is filed by the original claimant for enhancement of the compensation amount.

2. At about 10.30 PM on 19.8.1996, the claimant, who is a medical Doctor by profession, was riding his scooter. The matador insured by respondent No.3-Oriental Insurance Co. Ltd. dashed with the scooter from the rear side and knocked down the claimant causing serious injuries on the claimant's head. The claimant was required to undergo treatment for six months and on the ground that the claimant had suffered pain, shock and suffering and also suffered permanent disability, the claim petition was filed for compensation of Rs.10 lakhs.

3. The Tribunal held that the accident was caused by the rash and negligent driving of the matador, but the responsibility of the matador driver was to the extent of 90% and the claimant was guilty of contributory negligence to the extent of 10%.

For deciding the quantum of compensation, the Tribunal assessed the income of the claimant only at Rs.3,000/- per month and assessed the prospective income at Rs.5,000/- per month. In view of the

purshis given by the learned advocate for the claimant as agreed to by the learned advocate for the Insurance Company, the functional disability was assessed at 25% against 40% disability as indicated in the certificate of the Neurosurgeon. The Tribunal accordingly assessed the loss of future earning capacity at Rs.1,250/- per month = Rs.15,000/- per annum. Adopting the multiplier of 15 years, the compensation for loss of future income was computed at Rs.2,25,000/-. The Tribunal assessed compensation under various heads as under:-

For loss of future income	Rs.2,25,000/-
For loss of past income for six months	Rs. 18,000/-
For mental pain and agony	Rs. 25,000/-
For medical expenses	Rs. 20,000/-
For special diet and attendant charges	Rs. 5,000/-
For transportation charges	Rs. 5,000/-
Total	Rs.2,98,000/-

The Tribunal thus assessed the compensation at Rs.2,98,000/-, but in view of the finding on the question of negligence, reduced the amount by 10% and made the final award at Rs.2,68,200/- with

proportionate costs and interest at the rate of 9% per annum.

4. When this appeal came up for admission hearing on 21.4.2006, the Court issued notice for final disposal and made it returnable on 16.6.2006. The appeal was listed for final disposal time and again, but since no one was appearing for the respondents, including respondent No.3-Insurance Company, this Court directed fresh notice to be sent to respondent No.3 by registered post AD. The said notice was also served. Still in view of non-appearance on behalf of the respondent-Insurance Company, the hearing for final disposal was again adjourned from time to time. The matter has reached hearing today and Mr Kapadia for the appellant-claimant has submitted that sufficient time has been given to the Insurance Company to appear, but in spite service of notice twice, the Company has chosen not to appear so far. It is also pointed out from para 13 of the judgment under appeal that the claimant has been suffering from cancer and that, therefore, the matter merits urgent hearing. In this view of the matter, we have proceeded to take up the appeal for final disposal even in absence of respondent No.3-Insurance Company.

5. On merits, Mr Kapadia for the appellant-claimant has submitted that the claimant, a general medical practitioner, suffered serious head injuries on account of the rash and negligent driving of the

matador. There were multiple hemorrhagic confusion in bilateral temporal regions as certified by Dr Jwalit Sheth, Neurosurgeon Exh.49. The claimant was also required to undergo neurosurgery and is left with 40% disability. However, since the learned advocate for the claimant had agreed to the disability being assessed at 25%, he is not making any grievance against the extent of disability, but the Tribunal has grossly erred in under-assessing the income of the claimant in spite of income-tax return for the A.Y. 1997-98 indicating that the claimant's income from the profession was Rs.66,384/- and the gross total income was Rs.83,596/-.

It is submitted that on this basis the prospective income of the claimant was required to be assessed at Rs.10,000/- per month and even with 25% disability, compensation for loss of future earning capacity ought to have been computed at Rs.2500 X 12 X 15 = Rs.4,50,000/-. Mr Kapadia also made a grievance about the quantum of compensation for loss of income on the same ground. It is submitted that the compensation award under the other heads also cannot be said to be adequate.

6. As already indicated earlier, we have proceeded to hear this appeal for final disposal, but none of the respondents has appeared before us.

7. As far as the assessment of income is concerned, we find considerable substance in the

submission made by Mr Kapadia for the appellant that when the claimant is a general medical practitioner, the assessment of income at Rs.3,000/- per month appears to be very much on the lower side. It is true that the income-tax return for the A.Y. 1997-98 was filed on 17.4.1998 i.e. after the date of the accident, but considering the fact that the claimant is a general medical practitioner and that the claimant was serving with the Anjuman Trust Hospital at Godhra from 1982 to 1985, the claimant must have given up employment with the trust in order to have higher income and, therefore, it would not be unreasonable to assess the income of the claimant immediately prior to the date of the accident at Rs.6,000/- per month. On that basis and considering the fact that the claimant was aged 43 years on the date of the accident it would also not be unreasonable to assess the claimant's potential future income at Rs.9,000/- per month. Considering the 25% functional disability as agreed to by the learned advocates of both the parties before the Tribunal, the loss of earning capacity would work out to Rs.2,250/- per month = Rs.27,000/- per annum. Considering the age of the claimant (43 years), in this injury case it would be reasonable to apply the multiplier of 15 years as indicated in the Second Schedule to the Motor Vehicles Act, 1988 by relying upon the same as a reasonably safe guideline (Kaushmuma Begum vs. New India Assurance Co. Ltd., 2001 (1) GLR 593). That would make the amount of compensation under the head of compensation for loss

of future income = Rs.4,05,000/-.

8. Coming to the compensation for loss of past income, since the claimant's income on the date of the accident has already been assessed at Rs.6,000/- per month, for six months the amount would work out to Rs.36,000/-.

9. As far as the other heads of compensation are concerned, we are of the view that the amounts assessed by the Tribunal are within the brackets and, therefore, we do not propose to disturb the same.

10. In the result, the total amount of compensation payable to the claimant would be as under :-

For loss of future income	Rs.4,05,000/-
For loss of past income for six months	Rs. 36,000/-
For mental pain and agony	Rs. 25,000/-
For medical expenses	Rs. 20,000/-
For special diet and attendant charges	Rs. 5,000/-
For transportation charges	Rs. 5,000/-
Total	Rs.4,96,000/-

11. As far as the question of negligence is concerned, the Tribunal had determined the responsibility of the matador driver at 90% and that of the claimant at 10%. Although the learned counsel for the appellant sought to assail the said finding also, in view of the fact that the Tribunal appears to have considered the documentary evidence on record including the panchnama, we are not disturbing that finding, more particularly in view of the fact that we have accepted the submissions of the learned counsel for the appellant-claimant for enhancement of compensation in substantial measure.

Accordingly, the amount of compensation payable to the claimant would be Rs.4,96,000/- minus Rs.49,600/- = Rs.4,46,400/-.

12. In the result, the appeal is partly allowed. The award made by the Tribunal is modified to the extent that the amount of compensation awarded to the claimant is raised from Rs.2,68,200/- to Rs.4,46,400/-. The additional compensation shall also be paid with interest at the rate of 9% per annum from the date of the claim petition till the date of deposit. The additional amount and interest thereon as directed above shall be deposited with the Tribunal within one month from the date of receipt of a certified copy of this judgment. The proportionate

costs of this appeal shall be paid within one month from the date of receipt of the Bill of Costs.

Upon deposit of the amounts, the Tribunal shall pass appropriate orders for investment and disbursement after taking into consideration the claimant's needs for treatment for the current ailment and after informing the claimant about the amounts being invested/disbursed and the terms and conditions of investment.

13. The appeal accordingly stands disposed of. Direct service is permitted.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

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